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Attorney Docket No.: 63979-031
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
Hideyuki Tanaka, et al. : Customer No.20277
Serial No.: 10/646,816 : Confirmation No.: 1429
Filed: August 25, 2003 : Group Art Unit: 2811
For: NON-VOLATILE MEMORY AND THE FABRICATION METHOD THEREOF : Examiner: DOUGLAS W. OWENS

ELECTION UNDER 35 U.S.C. § 121

Mail Stop Amendment
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement set forth in the Office Action mailed September 15, 2004, having a shortened statutory period for response set to expire October 15, 2004, wherein the Examiner required restriction between the following Groups:

- Group I - Claims 1-11, drawn to a non-volatile memory; and
- Group II - Claims 12-17, drawn to a method of making a non-volatile memory.

Applicants elect without traverse, Group I - claims 1-11 for initial prosecution on the merits.

Applicants also reserve the right to file a Divisional Application for the non-elected claims 12-17, which the Examiner has indicated is patentably distinct.

Applicants believe that no extension of time is required. However, this conditional petition is being made to provide for the possibility that Applicants have inadvertently overlooked the need for a petition for extension of time. The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0417. A duplicate copy of this Response is enclosed for accounting purposes.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

Date: 10/7/04

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